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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 1808/2000 सन् 200

(23)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT (In Jail) — Jataram, S/o Yadram, aged about 47 years, Caste Nagwanshi, R/o Kukargaon, P.S. Bagbahar, Distt. Raigarh (M.P.) (now C.G.).

-Versus-

RESPONDENT — The State of M.P. (now Chhattisgarh), P.S. Bagbahar.

(Criminal Appeal under Section 374 (2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

1-10-2007

Heard Shri R.K. Jain, counsel for the appellant & Shri Ravindra Agrawal, Panel Lawyer for the State.

I.A.No.1

This is an application for urgent hearing.

The accused/appellant is in detention since 1997. Even though he has been granted bail by a Bench of this Court vide order dated 2-9-2004, but on account of poverty he has not been able to furnish the bail. Therefore, with the consent of learned counsel for the parties, the case is heard finally for its disposal.

Accordingly, I.A.No.1 stands disposed of.

Cr.A.No.1808/2000

Oral judgment dictated on *dias*.

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L.C. Bhadoo, J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 28-4-1998 passed by the Sessions Judge, Raigarh, in Sessions Trial No.155/1997 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of Loharsai and sentenced him to undergo imprisonment for life.

2) Case of the prosecution, in brief, is that on 21-6-1997 at about 11.00 a.m., Lohar Sai (since deceased) was sitting in front of his house and PW-4 Sajansai (grandson of the deceased) was applying oil on the back of Loharsai. At that time, accused came carrying axe concealed behind the cloth & attacked the deceased with the same on his chest, as a result of which he sustained fatal injury & died instantaneously. The matter was reported by PW-1 Karamsai in Police Station Bagbahara under Ex.P/1. Investigating Officer after registering the crime left for the scene of occurrence. After giving notice (Ex.P/2) to the Panchas, prepared inquest (Ex.P/3) on the body of Loharsai. He seized the axe, weapon of offence, from the place of occurrence under Ex.P/4. He took into possession the blood stained & plain soil from the place of occurrence under Ex.P/5. Blood stained lungi of the accused was seized under Ex.P/6. Blood standing dhoti of the deceased was seized under Ex.P/8. Site plan (Ex.P/9) was prepared by the Halka Patwari. Body of Loharsai was sent for postmortem examination to the Primary Health Centre, Lailunga under Ex.P/12 where Dr. Shailendra Upadhyay (PW-13) conducted postmortem on the body of Lohar sai. Postmortem report is Ex.P/12-A. Doctor opined that the cause of death was due to syncope & excessive internal haemorrhage due to injury to chest. Death was homicidal in nature. Seized articles were sent for

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examination to Forensic Science Laboratory, Raipur, from where report (Ex.P/16) was received. As per FSL report, blood was found on axe, lungi of the accused as also on dhoti of the deceased.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Dharamjaigarh, who in turn committed the case to the Court of Sessions Judge, Raigarh.

4) In order to establish the charge against the accused/appellant, the prosecution examined 13 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence. He stated that he is innocent and the witnesses are liars.

5) Learned Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard Shri R.K. Jain, learned counsel for the appellant & Shri Ravindra Agrawal, Panel Lawyer for the State.

7) Shri Jain, learned counsel for the appellant, has not disputed the homicidal death of Loharsai. Moreover, PW-4 Sajjansai (grandson of the deceased) has stated that on the fateful day he was applying oil on the back of his grandfather, at that time accused came carrying with axe, attacked on the chest of his grandfather & ran away. The above ocular evidence is corroborated by medical evidence of Dr. Shailendra Upadhyay (PW-13), who has stated that on 22-6-1997 he conducted postmortem on the body of Loharsai. He found that there was an incised wound on the chest in the size of

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2" x 1" bone deep, as a result of injury, the right ventricle was cut and the plate was opened. Clotted blood was present in the right ventricle. Cause of death was due to syncope, as a result of excessive haemorrhage. Postmortem report is Ex.P/12-A. He further stated that on the same day the axe, weapon of offence, was sent to him for examination. He examined the axe. Blood was present on the axe and in his opinion injury found on the chest of Loharsai would be caused by said axe. His report is Ex.P/13-A. Therefore, in view of the above ocular & medical evidence, it is established that the death of Loharsai was homicidal in nature.

8) As far as involvement of the accused in the crime in question is concerned, PW-4 Sajjansai (grandson of the deceased) is eyewitness to the incident whereas before PW-2 Naharsai, PW-5 Shivratan Singh, PW-7 Ghasia @ Buchuku & PW-9 Dhaneshwar, the accused made extra judicial confession.

9) Learned counsel for the appellant argued that from the scrutiny of evidence of PW-4 Sajjansai, it has come on record that, in fact, he had not witnessed the accused attacking the deceased with an axe. While drawing the attention of the Court towards para 6 of cross-examination of this witness, he argued that this witness has stated that at the time of attack he did not identify the accused, but when he started running he identified him, he saw the person attacking, but he could not identify immediately and he saw the accused while running away, therefore, from this evidence it cannot be held that, in fact, this witness identified the accused while attacking the deceased.

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10) In order to appreciate the argument advanced by learned counsel for the appellant, we have scrutinized the evidence of PW-4 Sajjansai. In para 1 of his evidence, he has categorically stated that 8-10 days prior to the incident his grandfather (Loharsai) sustained injuries on account of fall from a bicycle. On the fateful day, Loharsai was sitting at the gate of house and he was applying oil on the back of Loharsai. In the meanwhile, accused came from the wall side carrying axe concealed behind the cloth and said that "today where will you go", he attacked the deceased with axe on his chest, threw the same on the spot & ran away, as a result of which his grand father fell down. Deceased raised scream that he will not survive, on which this witness called his mother, informed her about the incident & started weeping. The incident took place in the day light at about 11.00 a.m. to 12.00 noon. This boy, as per his evidence, was applying oil on the back of deceased. He has categorically stated that he saw the accused came and he, in fact, challenged the deceased that "today where will you go". Therefore, it cannot be said that this boy had not witnessed the accused while attacking the deceased. Being a 12 years old child in cross-examination, he may not have been able to understand the questions properly; therefore, he replied that he identified the accused while running away. In clear & cogent manner, this witness has stated that the accused attacked his grandfather in front of him.

11) Moreover, the above evidence is corroborated by extra judicial confession made by accused in front of PW-2 Naharsai, PW-4 Shivratan Sngh, PW-7 Ghasia @ Buchuku & PW-9 Dhaneshwar. In order to place reliance on

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the extra judicial confession, it is necessary that the extra judicial confession must be voluntary, true & prompt.

12) In order to ascertain the above three conditions, we have scrutinized the evidence of above witnesses.

13) PW-2 Naharsai (brother of the deceased) has stated that on the fateful day he returned from his agricultural field. At about 12.00 noon he was sitting in the varandha of his house. At that time accused passed through that place and said him that he has committed the murder of his brother, he can go & see. Thereafter accused ran away. This witness went to the house of his brother & saw him lying dead. There was an injury on the stomach of deceased & blood was oozing out of the injury. In fact, he brought water & gave to the deceased. Sajjansai was present there. He disclosed that Jataram attacked the deceased with an axe & he left the axe on the place. Thereafter Karamsai went to call Sarpanch.

14) PW-5 Shivratan Singh, Sarpanch of the village, who has also corroborated the above evidence and stated that at about 11.00 a.m. to 12.00 noon Karamsai came & informed that his father has been attacked by Jataram with an axe and he is lying dead on the spot. Thereafter he left for the place of occurrence & saw that Loharsai was lying. There was an injury on the chest of the deceased. Blood was oozing out of the injury. At that time, Sajjansai was also present there. He disclosed that at the time of incident, he was applying oil on the back of deceased; all of sudden Jataram came & attacked his grandfather with an axe. In cross-examination, this witness has denied the

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suggestion that the accused made extra judicial confession under any threat or coercion.

15) PW-7 Ghasia @ Buchuku is also an independent person, who has stated that at about 12.00 noon he was at his residence. The accused came and made extra judicial confession that he has attacked Loharsai with an axe. When he enquired from Jataram as to why he has come to his residence, the accused has stated that he has come to his residence for the purpose of staying. He said that he will not keep him at his residence & he should go to his brother's house. Thereafter 4-5 persons came in search of Jataram & they took him from his house. Therefore, the evidence of Ghasia regarding extra judicial confession made by the accused before him inspires full confidence of the Court, because he is an independent witness. The accused went to his house in order to take shelter, he denied to give shelter to the accused, as the accused had attacked the deceased, in the meantime 4-5 villagers came in search of accused and asked him about the accused, he handed over the accused to the villagers and they took him to the place of occurrence where the accused made extra judicial confession. PW-9 Dhaneshwar has also corroborated the above evidence.

16) In view of the above extra judicial confession made by the accused in front of four witnesses, the ocular evidence of PW-4 Sajjansai stands corroborated. Therefore, in view of the above evidence, we are of the considered opinion that so far as the complicity of the accused in the crime in question is proved by the prosecution beyond reasonable doubt, which requires no interference by this Court.

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17) Learned counsel for the accused/appellant argued that the accused attacked the deceased only once, the injury was deep up to the bone and there was no intention to cause death. Therefore, the offence against the accused does not travel beyond Section 304 Part-II of the Indian Penal Code.

18) On the other hand, learned counsel for the State supported the judgment of the trial Court.

19) In this case, the prosecution has not been able to adduce any evidence to establish that why the accused attacked the deceased. In such a case, intention has to be gathered from the facts and circumstances of the case. To ascertain the intention of the accused, as has been held by the Supreme Court in the matter of **Thangaiya vs. State of Tamil Nadu**[1], the Court has to see the nature of weapon used, place of assault, part of body where injury was inflicted & other surrounding circumstances. If we look into all these aspects and the evidence of the case, the accused came with an axe, immediately asked the deceased that "today where will you go" and he attacked the deceased with such a force on the chest, with an axe (deadly weapon), as a result of which the right ventricle was cut and the deceased died instantaneously. Therefore, from the above facts, the intention of the accused was writ large to cause death of Loharsai. Even PW-13 Dr. Shailendra Upadhyay has stated that the injury was responsible for the death and the deceased died on account of syncope as a result of excessive haemorrhage.

[1] 2005 Cri.L.J. 684

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	20) For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court in convicting the accused person for commission of offence under Section 302 of the Indian Penal Code. 21) In the result, this appeal being devoid of merit liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**